

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

Case No. 09-47202

MARK C. GILCHRIST, and
BRENDA GILCHIRST,

Chapter 7

Judge Thomas J. Tucker

Debtors.

MARK C. GILCHRIST, and
BRENDA GILCHIRST,

Plaintiffs,

v.

Adv. Pro. No. 09-4411

BANK OF AMERICA NATIONAL
ASSOCIATION and WELLS FARGO HOME
MORTGAGE,

Defendants.

**ORDER TERMINATING THE STAY OF PROCEEDINGS
IN THIS ADVERSARY PROCEEDING AND
DISMISSING THIS ADVERSARY PROCEEDING**

On March 12, 2009, Debtors filed a voluntary petition for relief under Chapter 13, initiating bankruptcy Case No. 09-47202, and a complaint initiating this adversary proceeding. On April 27, 2009, the Debtors voluntarily converted their bankruptcy case from Chapter 13 to Chapter 7. Charles L. Wells, III is the Chapter 7 trustee. On June 5, 2009, the Court entered and “Order Staying Further Proceedings in this Adversary Proceeding Until the Automatic Stay no Longer Applies,” because “the claim(s) that Debtors are asserting in this adversary proceeding appear to be property of the bankruptcy estate in their pending Chapter 7 case.” (Docket # 21.)

On July 28, 2009, upon a motion filed by Debtors in the main bankruptcy case (Docket

42 in Case No. 09-47202),” the Court entered an “Order for Abandonment of Claims,” which provided: “IT IS ORDERED that the claims asserted by the Debtors in the Adversary Proceeding, Gilchrist v. Wells Fargo Home Mortgage, et al, Case No. 09-04411-tjt, are hereby abandoned by the Trustee in accordance with 11 USC § 554, and that the Debtors may pursue the claims in state court.” (Docket # 51.)

Because the claims in this adversary proceeding are no longer property of the estate which the Chapter 7 Trustee can prosecute for the benefit of the estate, the Court will terminate the stay of proceedings in this adversary proceeding, and dismiss this adversary proceeding for lack of subject matter jurisdiction.

The Court *sua sponte* reviews its subject matter jurisdiction, and concludes that it no longer has subject matter jurisdiction over this adversary proceeding. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1334(b), 157(a) and 157 (b)(1) over “all cases under title 11,” and over “all civil proceedings”: (1) “arising under title 11” or (2) “arising in” a case under title 11 or (3) “related to” a case under title 11. “The phrase ‘arising under title 11’ describes those proceedings that involve a cause of action created or determined by a statutory provision of title 11, and ‘arising in’ proceedings are those that, by their very nature, could arise only in bankruptcy cases.” *In re Bliss Technologies, Inc.*, 307 B.R. 598, 602 (Bankr. E.D. Mich. 2004)(citing *Wolverine Radio*, 330 B.R. at 1144). “Related to” proceedings are those proceedings in which “the outcome of [the] proceeding could conceivably have any effect on the estate being administered in bankruptcy.” *Pacor, Inc. v. Higgins (In re Pacor, Inc.)*, 743 F.2d 984, 994 (3d Cir.1984).

In light of the conversion of Debtors’ Chapter 13 case to Chapter 7, and the Order

abandoning the claims in this adversary proceeding to the Debtors, this adversary proceeding does not fall into any of the above jurisdictional categories. It does not involve a cause of action created by the Bankruptcy Code. Rather, it involves purely state law claims (*e.g.*, setting aside a sheriff's sale for failure to comply with state law), and is governed strictly by state law.¹ No cause of action is alleged that could arise only in a bankruptcy case. Finally, resolution of the claim(s) will have no effect on the bankruptcy estate, because the claim(s) asserted in this adversary proceeding are no longer property of the estate. Because of this, the Court does not have "related to" jurisdiction.

Accordingly,

IT IS ORDERED that the automatic stay of proceedings in this adversary proceeding is terminated.

IT IS FURTHER ORDERED that this adversary proceeding is DISMISSED for lack of subject matter jurisdiction.

Signed on July 28, 2009

/s/ Thomas J. Tucker
Thomas J. Tucker
United States Bankruptcy Judge

¹ The Complaint also seeks, after the Sheriff's sale is set aside and the Defendants' mortgage is thereby revived, that the Defendants' mortgage (which is a second mortgage on the property at issue) be stripped as wholly unsecured, under 11 U.S.C. §§ 1322(b)(2) and 506(a), for purposes of treating Defendants' claims in the Chapter 13 bankruptcy case. (Docket # 1 at ¶¶ 10-12). This claim became moot when Debtors converted their bankruptcy case to Chapter 7. Sixth Circuit case law is clear that such a "lien strip" cannot be done in a Chapter 7 case. *See In Re: Talbert*, 344 F.2d 555 (6th Cir. 2003).